

PATENT

Serial No. 09/817,971

Amendment in Reply to Final Office Action mailed on December 14, 2005

REMARKS

This Amendment is being filed in response to the Final Office Action dated December 14, 2005, which has been reviewed and carefully considered.

Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

By means of the present amendment, Claims 30, 31, 34, 35, 37, 38 are canceled herein without prejudice. The Applicant's reserve the right to reintroduce subject matter canceled herein in this and/or a continuing application. The claims have been amended for better conformance to U.S. practice, such as deleting reference designations typically used in European practice that are known to not limit the scope of the claims. Further amendments include beginning the dependent claim with 'The' instead of 'A'. The claims were not amended in order to address issues of patentability and Applicants respectfully reserve all rights under the Doctrine of Equivalents.

In the Office Action, claims 1, 15, 24, 27-28 and 40 are objected to for certain informalities. In response, claims 1, 15, 24, 27-28 and 40 have been amended to correct the informalities noted by the Examiner. It is respectfully submitted that the objection of claims 1, 15, 24, 27-28 and 40 have been overcome and

PATENT

Serial No. 09/817,971

Amendment in Reply to Final Office Action mailed on December 14, 2005

an indication as such is respectfully requested. Claims 1, 15, 24, 27-28 and 40 were not amended in order to address issues of patentability and Applicants respectfully reserve all rights they may have under the Doctrine of Equivalents.

In the Office Action, claims 19-20, 30-31, 34-35 and 37-38 are objected to for being of improper dependent form for allegedly failing to further limit the subject matter of a previous claim. Further, claims 19-20, 30-31, 34-35 and 37-38 are rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. The cancellation of Claims 30-31, 34-35 and 37-38 renders this rejection with regard to these claims moot.

Claims 19-20 have been amended to overcome the objection and rejection thereto. Accordingly, withdrawal of the objection and rejection to claims 19-20 is respectfully requested.

On pages 5-6 of the Final Office Action, the Examiner alleged that headings in the specification are required by 37 CFR 1.77(b). Applicants respectfully disagree and decline to add the headings as they are not required in accordance with 37 CFR 1.77(b) nor MPEP §608.01(a). It is respectfully submitted that "should" (as recited in MPEP §608.01(a), 37 CFR 1.77(b) and on page 5, line 1 of the Final Office Action), is suggestive or permissive, and not mandatory as in "must" or "shall". For example, 37 CFR 1.77(b) recites:

The specification should include the following

PATENT

Serial No. 09/817,971

Amendment in Reply to Final Office Action mailed on December 14, 2005

sections in order: (Emphasis added)

Similarly, 37 CFR 1.77(c) recites:

The text of the specification sections defined in paragraphs (b)(1) through (b)(12) of this section, if applicable, should be preceded by a section heading in uppercase and without underlining or bold type. (Emphasis added)

By contrast, 37 CFR 1.77(b)(5) recites:

(5) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on a compact disc and an incorporation-by-reference of the material on the compact disc (see § 1.52(e)(5)). The total number of compact discs including duplicates and the files on each compact disc shall be specified. (Emphasis added)

Thus, it is respectfully submitted that a distinction is made between "should" and "shall", where "should" is permissive, and "shall" is mandatory. Accordingly, it is respectfully submitted that headings are not required in accordance with 37 CFR 1.77(b) and MPEP §608.01(a).

In the Final Office Action, the Examiner indicated that Claims 1-8, 21-29, 32-33, 36, 39 and 40-41 are allowed. Applicants gratefully acknowledge the indication that claims 1-8, 21-29, 32-33, 36, 39 and 40-41 are allowed.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

PATENT

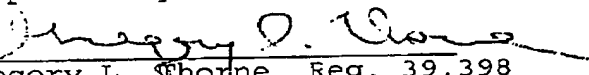
Serial No. 09/817,971

Amendment in Reply to Final Office Action mailed on December 14, 2005

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

It is believed that no additional fees or charges are currently due beyond the fee for two additional independent claims as authorized to be charged by the included credit card authorization form. However, in the event that any additional fees or charges are required for entrance of the accompanying amendment, they may be charged to Applicants' representatives Deposit Account No. 50-3649. In addition, please credit any overpayments related to any fees paid in connection with the accompanying amendment to Deposit Account No. 50-3649.

Respectfully submitted,

By   
Gregory L. Thorne, Reg. 39,398  
Attorney for Applicant(s)  
March 14, 2006

**THORNE & HALAJIAN, LLP**  
Applied Technology Center  
111 West Main Street  
Bay Shore, NY 11706  
Tel: (631) 665-5139  
Fax: (631) 665-5101